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UNITED NATIONS SPECIAL RAPPORTEUR ON THE PROMOTION AND PROTECTION OF THE RIGHT TO FREEDOM OF OPINION AND EXPRESSION

SUBMISSION

Freedom of Expression in Challenging Times

Introduction

ICNL is grateful for the opportunity to provide input regarding trends, challenges, and threats to freedom of expression in relation to the Gaza conflict and the situation in OPT. ICNL has been tracking restrictions imposed on free expression regarding the Gaza conflict globally, with a focus on restrictions affecting peaceful protest. In the United States, we have seen widespread crackdowns on pro-Palestine protests, as well as a raft of proposed legislation restricting peaceful protest rights and seeking to stifle and punish this mobilization. Across the rest of the world, protesters gathering to express solidarity with Palestine have faced dispersal and detention, pre-emptive bans on protests, and restrictions on expressive activity at and about protests.

Further details regarding these restrictions follow. This submission primarily addresses the first and second questions in the Special Rapporteur's call for inputs.

Respect for peaceful protest rights is essential to the protection of freedoms of opinion and expression.[1] International human rights law requires that the approach of the authorities to peaceful protests must be content neutral;[2] that the prohibition of a specific protest should be considered only as a measure of last resort;[3] and that the wearing of face coverings and use of expressive banners and signs should be permitted at protests except in exceptional circumstances.[4] Peaceful protests may be conducted in all spaces to which the public has access, and in private spaces with due weight given to the interests of others with rights in the property.[5] A failure to notify authorities of an upcoming protest, or to secure relevant permissions, does not render participation in the protest unlawful or warrant its dispersal or the arrest of participants or organizers.[6] And while peaceful protests may not be used for propaganda for war, or for advocacy of national, racial or religious hatred constituting incitement to discrimination, hostility, or violence, in such cases action should to the

extent possible be taken against individual perpetrators, rather than against a protest as a whole.[7] These principles have been articulated in both the UN[8] and other systems.[9]

The restrictive practices and measures described below transgress these requirements, with serious impacts on collective expression regarding the conflict in Gaza.

United States

In the U.S., the Gaza conflict has fueled more than 10,000 protests nationwide for Palestinian rights,[10] in the form of mass street demonstrations, rallies and encampments on college campuses, vigils, and other public assemblies. The overwhelming majority of protests have remained peaceful.[11] Despite the nonviolent nature of these protests, pro-Palestine demonstrators have faced repressive responses from state and nonstate actors. In addition to widespread police violence against protesters,[12] state and federal lawmakers have also introduced dozens of bills specifically seeking to restrict tactics and speech used by pro-Palestine demonstrators.

According to ICNL's US Protest Law Tracker, lawmakers proposed at least 45 bills between October 7, 2023, and June 15, 2024 that would restrict the right to protest.[13] The sponsors of most such bills have indicated that the legislation is meant to respond to pro-Palestine demonstrators.[14]

RESTRICTING PRO-PALESTINE STREET PROTESTS

Since October 7, U.S. lawmakers have introduced more than 20 bills targeting street protests by advocates for Palestinian rights by seeking to increase criminal penalties for blocking traffic.[15] Under a new law enacted in Tennessee in May, protesters who knowingly or recklessly obstruct a street or make passage "unreasonably convenient"—even in the absence of cars on the roadway—face at least two and up to 12 years in prison.[16] Louisiana and North Carolina are on track to enact similar laws.[17]

Five other bills target street protests by creating new protections for drivers who hit protesters with their cars. In June, the governor of Louisiana signed a new law to limit the civil liability of drivers who injure or kill protesters who are in the street unlawfully, if the driver "reasonably believed" he was in immediate danger and was trying to escape.[18] The U.S. has seen a rash of incidents of cars intentionally striking protesters,[19] including during pro-Palestine demonstrations,[20] and such bills may enable or even encourage such violence.

PUNISHING PRO-PALESTINE STUDENT PROTESTERS

Lawmakers in the U.S. Congress have proposed seven bills explicitly targeting pro-Palestine protests on college and university campuses.[21] One bill would strip federal funds from universities failing to remove potentially disruptive protest encampments after seven days.[22] Three bills would bar federal student loan forgiveness or other

financial aid to students charged with or convicted of criminal offenses during campus protests.[23] Two bills would penalize foreign students who are arrested for or charged with a crime while participating in campus protests, either by revoking their student visas or providing for their deportation.[24] While none of the bills have progressed significantly towards enactment, they have helped fuel politicians' narrative that the student protests are disruptive, hateful, and illegitimate.[25]

TARGETING PRO-PALESTINE PROTESTERS WHO COVER THEIR FACES

Four bills in the states and Congress introduced since October 7 seek to penalize protesters who wear masks or other face coverings.[26] Many protesters advocating for Palestinian human rights have chosen to wear a mask to avoid being doxed or facing other forms of retaliation.[27] But under a bill passed in June by lawmakers in North Carolina, protesters who wear masks or other devices to conceal their identity face enhanced criminal penalties if they commit any offense—even a nonviolent offense like trespassing. If enacted, a masked protester in a street rally that interferes with traffic could face up to three years in prison.[28]

STIGMATIZING PRO-PALESTINE ADVOCACY AS "TERRORISM"

Lawmakers have also introduced legislation that seeks to link protesters for Palestinian rights with "terrorism," either by conflating their tactics with those of "terrorists" or alleging that their speech implicitly supports designated terrorist organizations such as Hamas. For instance, following pro-Palestine demonstrations that blocked busy thoroughfares in New York City,[29] state lawmakers proposed a bill making it a felony "domestic terrorism" offense to "act with the intent to cause the deliberate blocking" of a public road, bridge, or tunnel."[30] Citing pro-Palestine protesters,[31] federal lawmakers in Congress have proposed preventing individuals from boarding airplanes if they have "openly pledged support for" designated terrorist organizations including Hamas.[32]

CONFLATING SPEECH SUPPORTING PALESTINIAN RIGHTS WITH "ANTISEMITISM"

Congressional and state lawmakers have also proposed and enacted laws that seek to limit pro-Palestine protests and speech by labeling all such advocacy "antisemitic." While the uprisings for Palestinian rights have—arguably like any mass movement—included fringe elements that espouse hateful or ignorant views, researchers have documented how rare such elements are.[33] Yet the U.S. House of Representatives in May adopted a bill that would deem much pro-Palestine advocacy "antisemitic" by expanding the definition of "antisemitism" to cover criticism of Israel for purposes of enforcing federal antidiscrimination law. Critics of the bill argue that the definition, which includes the "targeting of the state of Israel, conceived as a Jewish collectivity," would cover or chill recent protests criticizing Israel's conduct in Gaza and calling for

a ceasefire.[34] Other federal bills have sought to force universities and other entities to adopt this overbroad definition as the basis for regulating pro-Palestinian advocacy.[35]

Global

Across the world, authorities have imposed restrictions on peaceful protests in support of Palestine, including arrests, detentions, and dispersal of protesters; imposition of prohibitions and pre-emptive bans on protests; and limits on permitted forms of expression at protests, as well as sanctions for expression about protests.

ARRESTS, DETENTION, AND DISPERSAL OF PROTESTERS

Governments have arrested, detained, and dispersed protesters gathering in support of Palestine, often on the grounds that such protests had failed to secure necessary permissions or otherwise comply with restrictive frameworks governing protests. In **Egypt**, authorities detained at least 120 activists protesting in support of Palestine between October 7, 2023 and May 2024.[36] This included dozens of protesters arrested in October after pro-Palestine protests apparently endorsed by the Sisi regime included chants critical of the regime.[37] Other protesters have been arrested or charged on grounds of "collaborating with a terrorist group," "spreading and publishing fake news," "joining an illegal group" and unlawful assembly for, *inter alia*, criticizing Egypt's role in the siege of Gaza or expressing solidarity with women in Gaza.[38] In **Jordan**, at least 1,500 people were arrested between October 7 and April 2024 for participating in peaceful pro-Gaza protests.[39] Others have been arrested and placed in administrative detention under Jordan's 1954 Crime Prevention Law for refusing to sign pledges not to organize or participate in future protests.[40] In **Morocco**, more than a dozen activists were arrested, and others assaulted by police, for participating in a November 26 protest calling for an end to normalization of ties with Israel.[41] Authorities in **Bahrain** have arrested hundreds of people, including over 50 minors, for participating in pro-Palestine protests.[42] In **Turkey** in April 2024, police arrested dozens of protesters demanding an end to trade with Israel and showing solidarity with Gaza.[43] In June 2024, Turkish authorities arrested, and later released, 13 members of a youth group protesting in Istanbul against the Azerbaijani company SOCAR, for its continued provision of fuel supplies to Israel.[44] In **Kenya**, police dispersed a pro-Palestine protest in Nairobi in October 2023, on the alleged grounds that the protest did not adhere to necessary protocols and constituted a threat to public safety and order.[45] In January 2024, Kenyan police violently dispersed a permitted protest in Nairobi held in solidarity with Palestinians, with three activists arrested.[46] In **India**, in October 2023, police in Delhi detained hundreds of protesters expressing opposition to Israel's offensive in Gaza, for engaging in protests without the necessary permissions.[47] And in **Pakistan**, police arrested over a dozen activists in

October 2023 for engaging in a pro-Palestine protest in Islamabad without the necessary permissions, and in defiance of a ban on gatherings of five or more people.[48]

PROHIBITIONS AND PRE-EMPTIVE BANS ON PROTESTS

Governments have also imposed prohibitions on pro-Palestine protests, often on security grounds, while in some cases permitting pro-Israel protests to go forward. Local authorities in **Morocco** reportedly barred a pro-Palestine march from taking place in Rabat on May 15 (Nakba Day).[49] At least two applications to conduct pro-Palestine marches in **Bahrain** have been denied by the authorities for "security reasons".[50] In **Germany**, police have imposed pre-emptive bans on planned pro-Palestine protests, on the grounds that these gatherings posed an imminent danger of "inflammatory, antisemitic exclamations; the glorification of violence; [and] statements conveying a willingness to use violence."[51] In **France**, in October 2023, the interior minister issued a telegram instructing prefects to ban pro-Palestinian demonstrations, as "likely to generate public order disturbances."[52] Protesters gathering in defiance of this ban have faced arrest and forced dispersal, while pro-Israel protests have been authorized to go forward.[53] The European Civic Forum has identified ten other EU states where authorities have taken disproportionate measures to restrict protests relating to the Gaza conflict, including pre-emptive banning of protests.[54] In the **India**-controlled province of Kashmir, authorities have reportedly barred any protests in solidarity with Palestine and detained religious leaders to forestall pro-Palestine expression and protests.[55]

RESTRICTIONS ON EXPRESSION AT OR ABOUT PROTESTS

Authorities have also limited permissible forms of expression at pro-Palestine protests, while prosecuting and sanctioning online expression about these protests. In **Germany**, police have confiscated signs deemed objectionable at pro-Palestine protests, without any guidelines to constrain this exercise of discretion.[56] In **Jordan**, authorities have imposed prohibitions on holding banners with certain slogans in protests.[57] Jordanian authorities have also deployed the recently adopted Cybercrimes Law (Law No. 17 of 2023)[58] to prosecute persons for online posts about protests or crackdowns thereon. Persons have been convicted, fined, and sentenced to imprisonment under this law for posting online videos depicting treatment of pro-Palestine protesters by security forces;[59] criticizing repressive conduct by Jordanian security forces and calling for pro-Palestine protests;[60] and posting messages regarding the situation in Palestine and calling for a strike.[61]

Contact Information

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[3] *Id.* ¶ 37.
[4] *Id.* ¶ 60, 51.
[5] *Id.* ¶ 55, 57.
[6] *Id.* ¶ 71.
[7] *Id.* ¶ 50.
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